



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0583; FRL-9949-24-Region 9]

Approval of California Air Plan Revisions, Mojave Desert Air Quality Management District, Riverside County Air Pollution Control District, and San Bernardino County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve rescissions from the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP), as it applies to rules approved into the SIP for the Riverside County Air Pollution Control District (RCAPCD) and San Bernardino County Air Pollution Control District (SBCAPCD). These revisions concern superseded New Source Review (NSR) rules. We are approving the rescission of rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on **[insert date 60 days after the date of publication in the Federal Register]** without further notice, unless the EPA receives adverse comments by **[insert date 30 days after the date of publication in the Federal Register]**. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2015-0583

at <http://www.regulations.gov>, or via email to R9AirPermits@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972-3407, lawrence.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background

The California Air Resources Board (CARB) submitted Riverside County Air Pollution Control District (RCAPCD) and San Bernardino County Air Pollution Control District (SBCAPCD) Rules 213, 213.1, and 213.2, which address Clean Air Act (CAA) requirements for New Source Review (NSR) programs, to the EPA on June 6, 1977 for inclusion in the California SIP. The EPA approved RCAPCD Rules 213, 213.1, and 213.2 and SBCAPCD Rules 213, 213.1, and 213.2 into the SIP on November 9, 1978 (43 FR 52237). The area under the jurisdiction of RCAPCD and SBCAPCD at the time these rules were submitted is now under the jurisdiction of the Mojave Desert Air Quality Management District (MDAQMD) and the South Coast Air Quality Management District (SCAQMD). More information about the jurisdictional history of this area is found in the EPA's Technical Support Document (TSD) accompanying this rulemaking.

CARB has since submitted and the EPA has approved into the California SIP a series of NSR rules for MDAQMD and SCAQMD referred to as Regulation XIII. These rules supersede, among other rules, Rules 213, 213.1, and 213.2. This rulemaking action clarifies the applicable

NSR rules for the Mojave Desert air district by removing from the Mojave Desert portion of the California SIP RCAPCD Rules 213, 213.1, and 213.2 and SBCAPCD Rules 213, 213.1, and 213.2.

RCAPCD Rules 203.1, 203.2, and 213.3 and SBCAPCD Rules 203.1, 203.2, and 213.3 also address NSR requirements. However, we can find no evidence that RCAPCD Rules 203.1, 203.2, and 213.3 and SBCAPCD Rules 203.1, 203.2, and 213.3 were ever submitted for SIP approval. Consequently, we are taking no action on the rescission of RCAPCD Rules 203.1, 203.2, and 213.3 and SBCAPCD Rules 203.1, 203.2, and 213.3.

II. The State's Submittal

A. What rules did the State submit for rescission?

MDAQMD rescinded Rules 203.1, 203.2, 213, 213.1, 213.2, and 213.3 on April 28, 2008, and CARB submitted the rescissions adopted by MDAQMD as a revision to the California SIP on October 20, 2008. As noted above, these rules had originally been adopted by RCAPCD and SBCAPCD and approved by the EPA as part of the California SIP. More than a decade later, when MDAQMD was established, MDAQMD adopted the rules that had been adopted by the previous air pollution control district as part of that agency's initial set of rules and regulations. MDAQMD's submittal of the rescissions to CARB for submittal to the EPA make it clear that the rescissions relate to the corresponding SIP rules from which the corresponding MDAQMD rules derive. As such, CARB's submittal of the rescission of MDAQMD Rules 203.1, 203.2, 213, 213.1, 213.2, and 213.3 constitutes the rescission of the corresponding SIP rules, i.e., RCAPCD Rules 203.1, 203.2, 213, 213.1, 213.2, and 213.3 and SBCAPCD Rules 203.1, 203.2,

213, 213.1, 213.2, and 213.3. Table 1 lists these rules, along with SIP approval dates (if any).

Table 1: Rules Requested for Rescission from the Mojave Desert portion of the California SIP

Current Agency	Agency When Rule was Submitted to SIP	Rule #	Rule Title	SIP Approval date and FR citation
MDAQMD/ SCAQMD	RCAPCD	203.1	Special Permit Provisions	Not in SIP
MDAQMD/ SCAQMD	RCAPCD	203.2	Eligibility of Compensatory Emission Reductions	Not in SIP
MDAQMD/ SCAQMD	RCAPCD	213	Standards for Permits to Construct: Air Quality Impact	11/09/78 43 FR 52237
MDAQMD/ SCAQMD	RCAPCD	213.1	Standards for Permits to Operate: Air Quality Impact	11/09/78 43 FR 52237
MDAQMD/ SCAQMD	RCAPCD	213.2	Definitions for Rules 213, 213.1, and 213.3	11/09/78 43 FR 52237
MDAQMD/ SCAQMD	RCAPCD	213.3	Additional Standards for Permits to Construct and Operate	Not in SIP
MDAQMD	SBCAPCD	203.1	Special Permit Provisions	Not in SIP
MDAQMD	SBCAPCD	203.2	Eligibility of Compensatory Emission Reductions	Not in SIP
MDAQMD	SBCAPCD	213	Standards for Permits to Construct: Air Quality Impact	11/09/78 43 FR 52237
MDAQMD	SBCAPCD	213.1	Standards for Permits to Operate: Air Quality Impact	11/09/78 43 FR 52237
MDAQMD	SBCAPCD	213.2	Definitions for Rules 213, 213.1, and 213.3	11/09/78 43 FR 52237
MDAQMD	SBCAPCD	213.3	Additional Standards for Permits to Construct and Operate	Not in SIP

On November 18, 2008, we determined that CARB's October 20, 2008 SIP revision met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal review by the EPA.

B. What are the purposes of the submitted rule rescissions?

SBCAPCD and RCAPCD rules 203.1, 203.2, 213, 213.1, 213.2, and 213.3 have been

superseded by MDAQMD Regulation XIII and SCAQMD Regulation XIII. CARB has requested that these SBCAPCD and RCAPCD rules be rescinded from the SIP for the purpose of clarifying the SIP and to avoid confusion as to the SIP status of these rules. This action represents an administrative change and does not result in changes to SIP approved Regulation XIII that contains the current NSR program. A more detailed discussion of these rules is found in the TSD accompanying this rulemaking.

III. Evaluation and Action

A. How is the EPA evaluating the rescission of the rules?

The EPA is evaluating the rules submitted for rescission by CARB to determine whether they were ever approved in the relevant portion of the SIP, and if they had been approved in the SIP, whether they have been superseded by approval of subsequent rules by the EPA.

B. Do the rule rescissions meet the evaluation criteria?

The provisions contained in RCAPCD Rules 213, 213.1, and 213.2 and SBCAPCD Rules 213, 213.1, and 213.2 have been superseded by MDAQMD Regulation XIII, Rules 1300-1306 (61 FR 58133) and SCAQMD Regulation XIII, Rules 1301-1306, 1309-1310, 1313, and 1325 (50 FR 3906, 61 FR 64291, 64 FR 13514, 71 FR 35157, 80 FR 24821). The rescission of superseded rules is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. We can find no evidence that RCAPCD Rules 203.1, 203.2, and 213.3 and SBCAPCD Rules 203.1, 203.2, and 213.3 were ever approved into the SIP, therefore no action is necessary to remove them. The TSD has more information on our evaluation.

C. Public comment and final action

As authorized in section 110(k)(3) of the CAA, the EPA is fully approving the rescission

of RCAPCD Rules 213, 213.1, and 213.2 and SBCAPCD Rules 213, 213.1, and 213.2 because we have concluded that they were superseded years ago by approval by the EPA of subsequent rules and thus are no longer part of the applicable California SIP, and because rescission of them will clarify the contents of the MDAQMD portion of the SIP and avoid confusion as the SIP status of these rules. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule rescissions. If we receive adverse comments by **[insert date 30 days after date of publication in the Federal Register]**, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on **[insert date 60 days after date of publication in the Federal Register]**. This action will rescind specific rules from the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices,

provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(39)(ii)(J) and (c)(39)(iv)(J) to read as follows:

§52.220 Identification of plan—in part.

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(c) * * *

(39) * * *

(ii) * * *

(J) Previously approved on November 9, 1978 in paragraph (c)(39)(ii)(B) of this section and now deleted without replacement: Rules 213, 213.1, and 213.2.

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(iv) * * *

(J) Previously approved on November 9, 1978 in paragraph (c)(39)(iv)(B) of this section and now deleted without replacement: Rules 213, 213.1, and 213.2.

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